

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WENDY TOWNLEY, et al.,
Plaintiffs,
v.
ROSS MILLER, Secretary of State of
Nevada,
Defendant,
and
KINGSLEY EDWARDS,
Intervenor-Defendant.

3:12-cv-310-RCJ-WGC

ORDER

Currently before the Court is the U.S. Court of Appeals for the Ninth Circuit's opinion reversing and remanding a prior decision of this Court.

BACKGROUND

In June 2012, Plaintiffs filed an amended complaint for injunctive and declaratory relief in this Court seeking to enjoin Defendant Nevada Secretary of State Ross Miller, his agents, employees, affiliates, and all those acting in concert with him from allowing "None of these candidates" to appear on any paper, mechanical, or electronic ballots, voting machines, or other voting systems, in any future elections, including the November 6, 2012 general election. (Am. Compl. (#10) at 1, 16). Plaintiffs moved for a preliminary injunction. (Mot. for Prelim. Injunction (#15)).

On August 22, 2012, this Court held a hearing and stated that it intended to grant Plaintiffs' motion for a preliminary injunction and that it would issue a written ruling. (Minutes

1 of Proceedings (#39)). Defendants filed notices of appeal on August 24th and 25th, 2012.
2 (Notices of Appeal (#40, 41)). Sometime after Defendants had filed their notices of appeal but
3 prior to August 30, 2013, Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth
4 Circuit contacted this chambers through the Ninth Circuit Clerk's Office and requested that this
5 Court enter an early entry of its written injunction decision so that Judge Reinhardt could
6 entertain the premature notice of appeal and emergency motion for stay pending appeal. (See
7 Order Setting Date (#47) at 1-2). In response, on August 30, 2012, this Court ordered the
8 parties to file briefs regarding the motion to stay pending appeal on or before Friday,
9 September 7, 2012 and scheduled a hearing for Friday, September 14, 2012. (*Id.* at 2).

10 Subsequently, on September 5, 2012, the Ninth Circuit issued an amended order which
11 stated that it had jurisdiction over those appeals. (Ninth Cir. Order (#52) at 3). The Ninth
12 Circuit interpreted this Court's August 22, 2012 minutes of the proceedings as this Court's
13 preliminary injunction order and took jurisdiction over the appeal pursuant to 28 U.S.C.
14 § 1292(a)(1). (*Id.* at 2-3). As a result, this Court issued an order denying as moot Defendants'
15 Emergency Motion for Stay Pending Appeal and Emergency Motion for Clarification or
16 Modification of Order, or in the Alternative, to Enter a Written Order. (Order Denying as Moot
17 (#51) at 1).

18 On appeal, the Ninth Circuit did not reach the merits of this case. (Ninth Cir. Op. (#60)
19 at 5). The Ninth Circuit stated that it would not resolve the merits of the case because "none
20 of these plaintiffs has standing to assert the claims made in this lawsuit." (*Id.*). After analyzing
21 why the plaintiffs lacked standing, the Ninth Circuit "vacate[d] the preliminary injunction and
22 remand[ed] with instructions that the district court dismiss this action without prejudice for lack
23 of standing." (*Id.* at 17).

24 Pursuant to the remand, the Court now dismisses this action without prejudice for lack
25 of standing.

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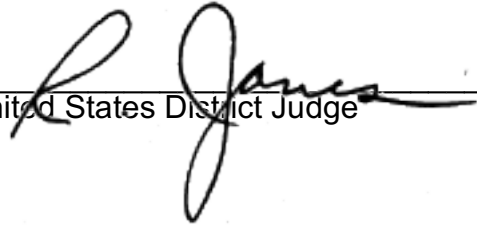
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CONCLUSION

For the foregoing reasons, IT IS ORDERED that this case is DISMISSED without prejudice for lack of standing.

The Clerk of the Court shall enter judgment accordingly.

Dated this 16th day of September, 2013.


United States District Judge